

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRIAN BURKE,

Plaintiff,

-vs-

CULLEN & TROIA, P.C., and KENMORE
ASSOCIATES, L.P.,

Defendants.

Case No.: 12-cv-4280 (GBD)

**ANSWER AND AFFIRMATIVE
DEFENSES ON BEHALF OF
DEFENDANT CULLEN &
TROIA, P.C. TO PLAINTIFF'S
COMPLAINT**

Defendant Cullen & Troia, P.C. ("CULLEN"), by its attorneys, Keidel, Weldon & Cunningham, LLP, as and for its Answer and Affirmative Defenses to plaintiff, Brian Burke's Complaint, dated May 22, 2012, hereby says as follows, upon information and belief:

NATURE OF ACTION

1. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of plaintiff's Complaint.

JURISDICTION AND VENUE

2. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

3. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

PARTIES

4. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of plaintiff's Complaint.

5. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

6. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

7. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

8. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

FACTUAL ALLEGATIONS

9. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 of plaintiff's Complaint.

10. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

11. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11 of plaintiffs' Complaint and refers all questions of law to this Honorable Court.

12. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12 of plaintiffs' Complaint.

13. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13 of plaintiff's Complaint and refers all questions concerning any document to the Court as the document referred to herein speaks for itself.

14. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 14 of plaintiff's Complaint and refers all questions concerning any document to the Court as the document referred to herein speaks for itself.

15. CULLEN denies the allegations set forth in paragraph 15 of plaintiff's Complaint.

16. CULLEN denies the allegations set forth in paragraph 16 of plaintiff's Complaint.

17. CULLEN denies the allegations set forth in paragraph 17 of plaintiff's Complaint.

18. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of plaintiff's Complaint and refers all questions concerning any document to the Court as the document referred to herein speaks for itself.

19. CULLEN denies the allegations set forth in paragraph 19 of plaintiff's Complaint.

20. CULLEN denies the allegations set forth in paragraph 20 of plaintiff's Complaint.

21. CULLEN denies the allegations set forth in paragraph 21 of plaintiff's Complaint.

22. CULLEN denies the allegations set forth in paragraph 22 of plaintiff's Complaint.

23. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 23 of plaintiff's Complaint and refers all questions concerning any document to the Court as the document referred to herein speaks for itself.

24. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 24 of plaintiff's Complaint.

25. CULLEN denies the allegations set forth in paragraph 25 of plaintiff's Complaint.

26. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 26 of plaintiff's Complaint.

27. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27 of plaintiff's Complaint.

28. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 28 of plaintiff's Complaint.

29. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29 of plaintiff's Complaint.

30. CULLEN denies the allegations set forth in paragraph 30 of plaintiff's Complaint.

31. CULLEN denies the allegations set forth in paragraph 31 of plaintiff's Complaint.

COUNT I
VIOLATION OF 15 U.S.C. § 1692g(a)(3)
DEFENDANT CULLEN

32. As to paragraph 32 of the Complaint, CULLEN repeats and realleges each and every response contained above with the same force as if fully set forth at length herein.

33. CULLEN denies the allegations set forth in paragraph 33 of plaintiff's Complaint.

COUNT II
VIOLATION OF 15 U.S.C. § 1692g(a)(4)
DEFENDANT CULLEN

34. As to paragraph 34 of the Complaint, CULLEN repeats and realleges each and every response contained above with the same force as if fully set forth at length herein.

35. CULLEN denies the allegations set forth in paragraph 35 of plaintiff's Complaint.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e(10)
DEFENDANT CULLEN

36. As to paragraph 36 of the Complaint, CULLEN repeats and realleges each and every response contained above with the same force as if fully set forth at length herein.

37. CULLEN denies the allegations set forth in paragraph 37 of plaintiff's Complaint.

COUNT IV
VIOLATION OF 15 U.S.C. § 1692e(14)
DEFENDANT CULLEN

38. As to paragraph 38 of the Complaint, CULLEN repeats and realleges each and every response contained above with the same force as if fully set forth at length herein.

39. CULLEN denies the allegations set forth in paragraph 39 of plaintiff's Complaint.

COUNT V
VIOLATION OF 15 U.S.C. § 1692i(a)
DEFENDANT KENMORE

40. As to paragraph 40 of the Complaint, CULLEN repeats and realleges each and every response contained above with the same force as if fully set forth at length herein.

41. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 41 of plaintiff's Complaint.

COUNT VI
VIOLATION OF 15 U.S.C. § 1692g(b)
DEFENDANT CULLEN

42. As to paragraph 42 of the Complaint, CULLEN repeats and realleges each and every response contained above with the same force as if fully set forth at length herein.

43. CULLEN denies the allegations set forth in paragraph 43 of plaintiff's Complaint.

COUNT VII
VIOLATION OF 15 U.S.C. § 1692f
DEFENDANT CULLEN

44. As to paragraph 44 of the Complaint, CULLEN repeats and realleges each and every response contained above with the same force as if fully set forth at length herein.

45. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

46. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 46 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

47. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 47 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

48. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 48 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

49. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 49 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

50. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 50 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

51. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 51 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

52. CULLEN denies having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 52 of plaintiff's Complaint and refers all questions of law to this Honorable Court.

53. CULLEN denies the allegations set forth in paragraph 53 of plaintiff's Complaint.

54. CULLEN denies the allegations set forth in paragraph 54 of plaintiff's Complaint.

55. CULLEN denies the allegations set forth in paragraph 55 of plaintiff's Complaint.

56. CULLEN denies the allegations set forth in paragraph 56 of plaintiff's Complaint.

JURY DEMAND

57. CULLEN also demands a trial by jury of all issues so triable.

FIRST AFFIRMATIVE DEFENSE

58. The allegations set forth in the Complaint fail to state a cause of action against CULLEN.

SECOND AFFIRMATIVE DEFENSE

59. Plaintiff suffered no damage from the alleged violations of the Fair Debt Collection Practices Act by CULLEN, which CULLEN denies, and therefore is not entitled to any award of damages, attorney fees or costs.

THIRD AFFIRMATIVE DEFENSE

60. The correspondence forwarded by CULLEN, if any, complied entirely with the Fair Debt Collection Procedures Act.

FOURTH AFFIRMATIVE DEFENSE

61. The correspondence in question did not overshadow the rights of the consumer.

FIFTH AFFIRMATIVE DEFENSE

62. The correspondence in question was not confusing to the "least sophisticated consumer."

SIXTH AFFIRMATIVE DEFENSE

63. Any violation of the Fair Debt Collection Practices Act by CULLEN, which CULLEN denies, was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

SEVENTH AFFIRMATIVE DEFENSE

64. Any violation of the law or damage suffered by Plaintiff, which CULLEN denies, was due to the affirmative actions and/or omissions of Plaintiff or others and does not give rise to any liability of CULLEN.

Dated: White Plains, New York
July 5, 2012

KEIDEL WELDON & CUNNINGHAM LLP

By:

A handwritten signature in black ink, appearing to read 'Christopher B. Weldon', is written over a horizontal line.

Christopher B. Weldon, Esq. (CW2260)

Robert J. Grande, Esq. (RG6958)

Attorneys for Defendant

Cullen & Troia, P.C.

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